

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO BRADLEY DAVIS,

Defendant-Appellant.

UNPUBLISHED

January 30, 2007

No. 264286

Ingham Circuit Court

LC No. 05-000334-FH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial conviction of unarmed robbery, MCL 750.530. Pursuant to MCL 769.12, defendant was sentenced as a fourth habitual offender to 2 ½ to 15 years in prison. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

The complainant, a church secretary, was robbed at her workplace. A man gained entrance to the church by claiming that he needed help obtaining a prescription for a sick child. The complainant spoke to the man and called a pharmacy. While the complainant was on the telephone, she observed the man in good light for several minutes. When the prescription could not be obtained, the man allegedly demanded money and threatened to kill the complainant. He took \$12.00 from the complainant.

The complainant gave a detailed description of the robber. She also assisted a police artist in completing a drawing of the robber. Thereafter, the complainant picked defendant's photograph from among six shown to her by a police detective.

During the preliminary examination, defendant's trial counsel authorized the complainant to identify defendant while defendant was seated in the courtroom with another inmate. Both men were dressed in jail clothes. The complainant made her identification of defendant through a courtroom window.

Defendant's counsel moved for a corporeal lineup days before trial. At a hearing, defendant's counsel acknowledged that a prior identification had occurred, but argued that it would be proper to have a corporeal lineup, with counsel present. The prosecutor urged that a second lineup was unnecessary because an identification had already been made. The prosecutor

asserted that the identification “bell” could not be “unrung.” The trial court denied defendant’s motion.

We review the denial of a defense motion for a corporeal lineup for an abuse of discretion. *People v McAllister*, 241 Mich App 466, 471; 616 NW2d 203 (2000). Whether to grant a defendant’s motion for a lineup is a matter of the trial court’s discretion. *Id.*; *People v Gwinn*, 111 Mich App 223, 249; 314 NW2d 562 (1981). The right to a lineup arises when identification of the defendant is in issue and there is a reasonable likelihood of mistaken identity that a lineup would tend to resolve. *Id.*

Defense counsel participated in, or authorized, the arguably tainted identification of defendant through the courtroom window. Defense counsel’s act of participating in or authorizing the identification procedure constitutes a waiver of this alleged error on appeal. *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). Moreover, defendant may not assign error on appeal to something which his own counsel deemed proper at trial. *People v Roberson*, 167 Mich App 501, 517; 423 NW2d 245 (1988). “To do so would allow defendant to harbor error as an appellate parachute.” *Id.*

Moreover, we find that an independent basis existed for the complainant’s in-court identification of defendant at trial. In *People v Gray*, 457 Mich 107, 115-116; 577 NW2d 92 (1998), our Supreme Court listed several factors for evaluating the existence of an independent basis for identification in circumstances where pretrial identification is at issue. Based on the *Gray* factors, we conclude that there was indeed an independent basis for the complainant’s in-court identification of defendant. The complainant had a good opportunity to view her assailant over more than ten minutes, at close range, under appropriate lighting. Her identification of defendant via photographs shown to her by police occurred 11 days after the crime, and was quick and certain. A police artist drew a fair likeness of defendant based on complainant’s description one week after the robbery. Finally, complainant demonstrated throughout that she adequately remembered details of the crime. In sum, there was an independent basis for complainant’s identification of defendant. Thus, although eyewitness identification was a material issue in this case, a corporeal lineup would not have resolved any “mistaken identification” by the complainant. *McAllister*, *supra* at 471. The trial court did not abuse its discretion by denying defendant’s motion for a corporeal lineup. *Id.*

Defendant also argues that he is entitled to credit for time served in jail before the trial in this case. MCL 769.11b. We disagree. Defendant was on parole following an unrelated prison sentence when he was charged with the instant offense. When a parolee is arrested for a new offense, he is held on a parole detainer until he is convicted of that offense, and he is not entitled to credit for time served in jail on the sentence for the new offense. *People v Stead*, 270 Mich App 550, 551; 716 NW2d 324 (2006). Because defendant was held on a parole detainer pending trial, MCL 769.11b does not apply in this case, and the trial court properly declined to grant credit for jail time served. *Id.*

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper